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THE CRIMINAL RESPONSIBILITY OF THE INSANE.

A Lecture

INTRODUCTORY TO THE SESSION 1885-6.

BY

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CRIMINAL RESPONSIBILITY OF THE INSANE.

It is by no means with unmixed pleasure that I find myself called upon to deliver the Introductory Address on this occasion, for I cannot forget that I am occupying this place as the successor of my dear friend and colleague, the late Prof. Thorburn. For nineteen years he had held the Chair which it is now my privilege to occupy. No one can be more painfully conscious than myself of the difficult task which is in store for his successor. It is no light thing to be called upon to take the place of one whom all acknowledge to have been a singularly clear, practical, and acceptable teacher, and whose private character won for him such universal respect, that his death has impressed all of us who knew him, whether colleagues or students, with a sense of personal loss.

With regard to the selection of a subject for my address to-day, I should have experienced considerable difficulty had it not been for the kindness of the Principal. The usual course has been for the professor, to whom the duty of delivering the opening address has been allotted, to choose a topic connected with the subject of his chair, as being that with which he is necessarily most familiar.

Such a course was, in this instance, for obvious reasons, undesirable, and I felt very grateful to the Principal when, with characteristic consideration, he assured me that I should not be expected to adopt it. Being thus freed from the necessity of addressing you on my own special subject, and yet mindful of the injunction of Horace* which Prof. Wilkins quoted so aptly, and obeyed so successfully last year, I decided to offer some remarks on the Criminal Responsibility of the Insane, making my address a sort of last word on Medical Jurisprudence, with the teaching of which I have been entrusted during the past seven years, and to which, now that I am placed in charge of a more prominent branch of medical study, I, not without some feeling of regret, bid farewell.

Object of the Address.

The object I have in view in this address is to draw public attention to the extremely unsatisfactory state of the law in this country with reference to the plea of insanity in criminal cases. For many years medical writers of eminence have been uttering their protest against a continuance of the present state of things, and recently one of our most experienced judges has declared a change to be necessary. The chapters in his History of the Criminal Law of England, in which Sir James Stephen deals with this subject, constitute one of the most valuable, and certainly one of the most temperate contributions yet made to the study of the question. Nevertheless, public opinion is not yet fully aroused, and, until it is, no alteration either in the law, or in the methods of procedure can be

* "*Quam scit* [*quisque*], *libens, censebo, exerceat artem.*"
"Let each one do the work he knows the best."

reasonably hoped for. Let us trust that the reformed parliament, which may possibly receive an important contingent from the Senate of Owens College, will take an early opportunity of endeavouring to bring the law on this question into something like harmony with the teachings of science and the dictates of humanity.

Relat betw crime disea

It is admittedly a matter of the utmost difficulty to define with anything like precision, the point at which we should cease to regard crime as the result of depravity, and treat the wrong-doer, not as a criminal, but as the victim of disease. Some writers have gone so far as to maintain that almost every criminal, and certainly every habitual criminal, ought in strict justice to be regarded as only in a very limited sense accountable for his actions. And, looked at apart from the interests of society, from the necessity under which every community lies to protect itself from those who offend against its laws, there is much to be said in favour of this view. It is surely unnecessary at the present day to point out that just as truly as the material brain is the organ of thought, or of the intellectual faculty, defect of, or injury to certain portions of which is certainly attended with defect of, or injury to the intelligence, so too, that which has been termed (perhaps not very happily) the moral sense, has its seat in the material brain, and the integrity of the moral sense is primarily dependent upon physical conditions, that is, upon normal and healthy development, and upon freedom from injury or disease. If this proposition, stated so nakedly, should seem startling, and to savour of materialism, I would remind you that it is merely the statement of a truth that we are practically

acknowledging every day. We hear of a child, for example, that betrays from its earliest years the most evil propensities, that no discipline of kindness or severity can train to truthfulness, and that comes eventually to be recognised as altogether exceptional, and neither to be treated by ordinary methods, nor judged by ordinary standards, and, learning on enquiry that the child's grandfather was insane or that his father was a confirmed drunkard, we immediately connect the two facts, and accept the one as the explanation of the other. Yet that child's moral perversion can be the result of inheritance only by being dependent upon some physical defect of brain. Let me illustrate the matter in another way. It is a fact well known to every one who has to do with insane people that in many forms of insanity, due to brain-disease, one of the earliest and most unmistakable symptoms is a deterioration of the moral character; the straightforward man becomes deceitful and cunning, the kind and considerate man becomes surly and self-indulgent, the pure-minded man becomes immodest, the man of even temper becomes irritable and passionate. In attributing these signs of deterioration of the moral sense to a physical alteration which is taking place in the man's brain, we are accepting the truth of the proposition that the soundness of the moral sense depends upon the soundness of the brain, or, in other words, that the moral sense, equally with the intellectual powers, has a physical basis in the brain. A further illustration of the manner in which the maintaining of a correct moral standard may depend upon physical conditions, is to be found in the moral break-down that so frequently occurs as a result of

over-strain and exhaustion of the nervous system. The condition to which I refer is graphically described by my friend and colleague, Dr. Ross, in his work on the "Diseases of the Nervous System." "When the nervous system," he says, "is subjected to severe strain and becomes exhausted, the conscience, which is the highest product of the evolution of character, becomes blunted, the power of self-control is enfeebled, and the individual may find that he is in the grip of a great temptation which may take years of painful struggle to overcome" (Vol. II., 2nd edit., p. 658). He goes on to show that when under these circumstances a break-down occurs, it does so at the weakest point of the man's character, whether that weakness be inherited or acquired. "The varying strength of inherited appetites," he continues, "is admirably stated in an eloquent passage quoted by Dr. Carpenter from Robert Collyer of Chicago. 'In the far-reaching influences that go to every life,' says Mr. Collyer, 'and away backward as certainly as forward, children are born with appetites fatally strong in their nature. As they grow up, the appetite grows with them and speedily becomes a master, the master a tyrant, and by the time he arrives at manhood, the man is a slave. I heard a man say that for eight and twenty years the soul within him had had to stand like an unsleeping sentinel, guarding his appetite for strong drink. To be a man, under such a disadvantage, not to mention a saint, is as fine a piece of grace as can well be seen. There is no doctrine that demands a larger vision than this of the depravity of human nature. Old Dr. Mason used to say that as much grace as would make John a saint, would barely keep Peter from knocking a man down.'"

The subject is a fascinating one, but I have not time now to pursue it further. I only wish to show that the connection between crime and disease is much more intimate than at first sight appears, and that those who lay such stress on this connection as to doubt whether the majority of criminals are actually accountable for their actions, can adduce much testimony in support of their view, although their conclusions may be, and no doubt are, at present, hopelessly impracticable.

Smollett's views.

At the other end of the scale are those writers of whom Smollett may be taken as a type, who would, under no circumstances, accept insanity as an excuse for crime. The passage in which Smollett gives expression to his views on the subject is worth quoting, not only because he is believed to have been the first to express these views in writing, but also because, as he puts the issue very clearly, his statement will afford us an opportunity of examining whether the opinions it embodies rest on any solid foundation. He has been describing the assassination, by Earl Ferrers, of his steward, Mr. Johnson, whom his lordship believed to be implicated in a conspiracy against him. Every one who knew Earl Ferrers considered him to be insane. Madness was hereditary in the family, and, at the trial, the plea of insanity, which he had reluctantly allowed to be set up, was amply supported by witnesses. He was, nevertheless, condemned to death, and his execution took place without his betraying the least sign of contrition. "This unhappy nobleman's disposition," says Smollett, "was so dangerously mischievous, that it became necessary for the good of society, either to confine him for life as an incorrigible lunatick, or give him up as a sacrifice to

justice." And then he goes on to say, "Perhaps it might be no absurd or unreasonable regulation in the legislature, to divest all lunaticks of the privilege of insanity, and, in cases of enormity, subject them to the common penalty of the law; for, though in the eye of casuistry, consciousness must enter into the constitution of guilt, the consequences of murder committed by a maniac may be as pernicious to society as those of the most criminal and deliberate assassination; and the punishment of death can hardly be deemed unjust or rigorous when inflicted upon a mischievous being, divested of all the perceptions of reason and humanity."* I have heard similar views expressed in our own day. Every now and then there occurs a case of homicide by a madman where the attack is so unprovoked, and its details so horrible, that the public is seized with a sense of dreadful insecurity, and men begin to wonder whether it would not be a good thing to rid society of any further risk, or trouble, or expense in connection with this particular madman, by hanging him. It might, they think, act as a deterrent on other madmen, and would be as kind to the man himself as consigning him to a lunatic asylum for the rest of his life. With regard to the deterrent effect upon other madmen, there are one or two points of which those who think such an effect possible seem to lose sight. The first is, that under the present system, according to which insanity is nominally regarded as an excuse for crime, a man who is thinking of taking the life of another (and, for reasons that I shall state presently, it is chiefly in cases of homicide that insanity is pleaded) has, in case of his

Similar view occasionally expressed now.

Deterrent effect upon others of punishing insane homicides with death.

* Smollett, Hist. Eng., 4 vols., Lond., 1848.—Vol. iv., pp. 347—356.

being apprehended, tried and convicted, a sufficiently fearful prospect before him. If the jury pronounce him sane, he will be sentenced to be hanged, and either that sentence will be carried out, or, supposing a successful appeal to be made on his behalf to the Home Secretary, the death sentence will be commuted to one of penal servitude for life. If he be found insane, he will be consigned to a lunatic asylum, and to the company of madmen for the rest of his days. Surely nothing can be more likely to act as a deterrent than the prospect either of death, or of one of these two dreadful alternatives. But, further, the deterrent influence of a punishment can only come into play in the case of a man who is capable of reflecting before he commits a crime. In the great majority of insane homicides, the capacity for reflection is either annihilated or is in abeyance; no consideration of consequences affects their conduct. And even in the case of that small number who may be supposed in some sort to weigh the consequences of the act they are contemplating, there is abundant evidence to show that death has no terrors for them; they regard it with calm indifference, if not as a thing to be desired and welcomed.* But there remains yet to be urged what is to my mind, the strongest of all arguments against the indiscriminate hanging of sane and insane alike; that, namely, which is based on considerations of justice and humanity. Smollett says

Such punishment unjust and inhumane.

* Dr. Guy published, some years ago, in the Journal of the Statistical Society, a paper giving an account of a laborious analysis which he had undertaken of the figures supplied by the Judicial statistics of this country for a period of seventy years, and the conclusion at which he arrived was, that "The punishment of death does not act as a deterrent to the weak-minded and the insane, but, on the contrary, either attracts or fascinates them, or suggests to them thoughts of killing."

that to inflict the punishment of death on a mischievous being divested of his reason cannot be deemed *unjust*. Whatever men may say as to the "simplicity and convenience" of the method of treating all alike, I imagine few would be disposed to agree with Smollett in upholding its justice. It may be recommended as being "sharp, stern, and cheap," but as Dr. Guy says, its justice is such "as no painter or sculptor ever yet imagined, the bandage very tight over the eyes, the scales nowhere."

It must be remembered that Smollett wrote at a time when the treatment of the insane in this country was barbarous beyond description, and when, even in such large and important hospitals as Bethlem and St. Luke's, lunatics were placed in cages like wild beasts, and made objects of public exhibition. A great change has, however, taken place in the management of the insane. The humanity which has built and endowed hospitals for all kinds of bodily disease, has been extended to the unfortunate victims of mental disease, and has led to the establishment throughout the country of institutions for their care and treatment, where medical men, second in ability to none in their profession, devote their lives to the study of insanity, and to the amelioration of the condition of its victims. All this signifies that a change, amounting to a complete revolution, has been effected since Smollett's time in the attitude which the community assumes towards the weak-minded and the insane, and the suggestion which one can imagine to have been then received with favour, strikes us now as intolerable in its inhumanity.

English law recognizes insanity as an excuse for crime, but with certain limitations.

The truth lies between these two extremes of opinion, and the law recognises this by accepting insanity, within certain limitations, as an excuse for crime. It is obvious, however, that it would be unsafe to accept the plea without requiring evidence of the insanity, "lest on the one side," to quote the quaint words of Sir Matthew Hale, "there be a kind of inhumanity towards the defects of human nature, or, on the other side, too great an indulgence given to great crimes." Every person, therefore, accused of a crime is held to be sane, and to be legally responsible for his actions, until he is proved to be otherwise. In other words, whenever the plea of insanity is set up, it rests with the accused, or with those to whom his defence is entrusted, to prove the existence of the insanity. I propose now to enquire what amount of proof is necessary in order that the plea of insanity shall be sustained, what are the tests, in short, to which the evidence in any given case is submitted, and whether those tests are in accordance with the present state of our knowledge of mental disease. It will facilitate this enquiry and further the object I have in view if I show from the records of one or two of the state trials * during the last and the early part of the present century, on what principles the decisions of our courts of law have from time to time been regulated in cases where the defence of insanity has been set up.

Legal tests of insanity.

Their history and gradual developm'nt.

Arnold's case, 1723.

In the year 1723, a man named Arnold, who appears to have been of weak intellect from his birth, shot at and

* State trials are selected because these are the only trials reported with a fulness and accuracy sufficient for our purpose, and also because, owing to their importance and to the public interest they excited, some of them have become historical.

wounded Lord Onslow, and was defended, at his trial, on the ground of insanity. It was shown that he had been regarded as a lunatic by his family and neighbours for several years previously, but as his insanity had hitherto declared itself in harmless ways, he had been suffered to bo at large. "Among other unfounded notions, he believed that Lord Onslow, who lived in his neighbourhood, was the cause of all the tumults, disturbances and wicked devices that happened in the country.....He was in the habit of declaring that Lord Onslow sent his devils and imps into his room at night to disturb his rest, and that he constantly plagued and bewitched him.....so that he could neither eat, drink, nor sleep for him." Under the influence of these delusions, he made the attempt on the life of Lord Onslow, manifesting subsequently no compunction for what he had done. It might be thought that the evidence of insanity here was overwhelming, but the judge was not satisfied. He is reported to have told the jury "that it is not every kind of frantic humour, or something unaccountable in a man's actions, that points him out to be such a madman as is exempted from punishment: it must be a man that is totally deprived of his understanding and memory, and doth not know what he is doing, no more than an infant, than a brute, or a wild beast." The jury, thereupon, rejected the plea, and it was only on the intercession of Lord Onslow himself that the death-sentence was commuted to one of imprisonment for life. Clearly then, the law at that time held an insane person responsible for crime, so long as he retained the slightest vestige of reasoning power. Yet it deprived him, and has ever since deprived him of the

management of himself and his affairs, that is to say, has visited him with civil disability, on evidence of a degree of mental incapacity falling far short of such an utter deprivation of reason. It is difficult to find any logical ground for this distinction between the legal consequences of the civil and criminal acts of an insane person. To quote the words of a very able American writer on this subject, it is as if the law said to the insane man, "Your reason is too much impaired to manage your property; you are unable to distinguish between those measures which would conduce to your profit and such as would end in your ruin, and therefore it is wisely taken altogether from your control; but if under the influence of one of those insane delusions that have rendered this step necessary, you should kill your neighbour, you will be supposed to have acted under the guidance of a sound reason, you will be tried, convicted and executed like any common criminal, whose understanding has never been touched by madness."

Hadfield's case, 1800.

The extremely crude notions of criminal responsibility which found expression in the ruling of Mr. Justice Tracy continued to prevail undisturbed for seventy-seven years, when Mr. Erskine, afterwards Lord Erskine, introduced a new test, which was a distinct step in advance. In the year 1800, it may be remembered that a man named Hadfield was tried for shooting at the King in Drury Lane Theatre. Erskine undertook his defence. Hadfield imagined that he was in constant communication with the Almighty, that the world was coming to an end, and that he was called upon to sacrifice himself for its salvation. Not wishing to be guilty of suicide, it occurred to him

that if he fired a pistol at the King his life would be taken by others, and thus the heavenly call would be obeyed. The Attorney-General, in his address to the jury on behalf of the Crown, had enunciated the old barbarous doctrine that to protect a person from criminal responsibility there must be a total deprivation of memory and understanding, when Erskine replied that if these expressions were to be taken literally, "no such madness ever existed in the world," and in a speech which has been greatly admired, but which I have not time to quote, he declared that the existence of a delusion of which the criminal act was the "immediate and unqualified offspring" betokened a sufficient amount of insanity to exempt from punishment. He had no difficulty, of course, in showing that Hadfield's act was the direct outcome of his delusions, and, as a result of his eloquent defence, the judge stopped the prosecution and the man was acquitted. As much misconception has surrounded this question of the value of delusions as proof of insanity, and as many lawyers of the present day have not got beyond the view propounded by Erskine on the occasion to which I have just alluded, it may be well to state here that although delusions, when they can be shown to be present, do undoubtedly furnish evidence of insanity, the importance of which cannot be overrated, yet it is equally true that insanity of a most dangerous type may exist without delusions. And as to the obligation which, according to Erskine's dictum, would be imposed on the prisoner's counsel of showing that a given act of violence was the direct result of the delusion, —of establishing a direct and palpable connection between them, it is one that it would be often impossible to fulfil,

Delusions as proof of insanity.

even when such a connection did really exist. Let me illustrate this by an example. An insane youth conceived such a passion for windmills that he was never happy or quiet except when he had one within view. To cure him of his infatuation his friends removed him to a place where there were no windmills. He had not been long in his new home before he was arrested for killing and mutilating a little girl. The connection between a fancy for windmills and such a terrible outrage was not very obvious; nevertheless it existed. The boy's object in killing the child was to ensure his removal from a place where he could find no windmills. To ask an advocate to trace the relationship between an insane act and an insane delusion is to require him to follow the reasoning of an insane mind, a task to which no man in his senses is equal.

The time had not yet come, however, for such a comparatively enlightened view as that propounded by Erskine to be accepted as a legal dogma, and in the next conspicuous trial of a similar kind there was something like a return to the time-honoured criterion. In 1812 the Prime Minister, Mr. Spencer Perceval, was killed by a madman named Bellingham, under the influence of insane delusions. Bellingham magnified his private grievances into national wrongs, and was convinced that if he could but obtain a public hearing the Government would be compelled by the country to make good his losses. In order to bring this about, and to give himself an opportunity of making a statement, he hit upon the idea of assassinating the head of the Government. He was placed upon his trial for murder, and Sir Vicary Gibbs, the Attorney-General, conducted the prosecution. In address-

Bellingham's case, 1812.

ing the jury on behalf of the Crown, he declared that "a man may be deranged in his mind, his intellect may be insufficient for enabling him to conduct the common affairs of life, such as disposing of his property or judging of the claims which his respective relations have upon him, and if he be so, the administration of the country will take his affairs into their management, and appoint to him trustees; but, at the same time, such a man is not discharged from his responsibility for criminal acts." "Upon the authority of the first sages of the country," he continued, "and upon the authority of the established law in all times, which law has never been questioned, although a man may be incapable of conducting his own affairs he may still be answerable for his criminal acts if he possesses a mind capable of distinguishing between right and wrong." It will be observed that this dogma, in which the presiding judge, Lord Mansfield, concurred (with the result that the poor madman was executed), was a little less monstrous than that of Judge Tracy. At the same time it erects a standard of insanity which it is impossible for anyone to reach, and which is tantamount to a refusal to accept insanity under any circumstances as an excuse for crime. For some time to come, however, this test took its place in English law among those by which the degree of insanity necessary to exempt from punishment had to be measured.

Mc. Naghten's case, 1843.

I pass on now to the well-known case of McNaghten, who was tried in 1843 for the murder of Mr. Drummond in mistake for Sir Robert Peel, from whom he imagined himself to have received an injury. The prisoner was defended by the late Lord Chief Justice Cockburn, and

The judges' exposition of the law in answer to the House of Lords.

was aequitted on the ground of insanity. A ery of indignation arose throughout the eountry, and the House of Lords took the opportunity of requesting from thc judges an authoritative exposition of the law coneerning thc plea of insanity in eriminal eases. A series of questions was propounded to thcm, and their replies to thcse qucstions have formed, from that time to this, the basis upon which our judges have directed the jury whenever the plea of insanity has ben set up. The answcrs need not be quoted at length; a single passage will suffiee to indicate the purport of thc whole doeument. In rcply to thc seeond and third questions, the judges state that in their opinion "to establish a dcfencc on the ground of insanity it must bc clearly proved that at the timc of committing the aet the party aeeused was labouring undcr sueh a defeet of rcason from diseasc of the mind as not to know thc nature and quality of the aet hc was doing, or, if he did know it, that he did not know he was doing what was wrong." Thus was formulated thc test whieh, although it ncver found its way into an Aet of Parliament, has been treated cver sinee the year 1843 as though it were the law of the land. Just as the test propounded by Sir Vieary Gibbs was an advance upon that of Mr. Justiec Tracy, so again this last authoritative exposition of the law imposed a test whieh marked a further advance in thc direetion of humanity and common sense. The test of Sir Vieary Gibbs was the power of distinguishing betwecn right and wrong in the abstract, thc test laid down by the judgcs was the power of distinguishing between right and wrong in referenee to thc partieular act with which thc aeeused is charged. The formcr eonstitutcs a eriterion which

practically exempts no one; the latter, on the contrary, does every now and then afford a loophole for escape. Notwithstanding, however, that in this respect, the more recently propounded test is distinctly in advance of its predecessors, I think I shall be able to show that it is still far from meeting the requirements of the case, either theoretically or practically; in other words, that it is quite out of harmony with our present knowledge of mental disease, and that the results of its practical application are in the highest degree unsatisfactory.

The existing t ignores the emotic and the w —is simp a knowled test.

The mental functions of the brain may be described as threefold—intellectual, emotional, and volitional. No one can be said to be of sound mind unless all these functions are healthily performed. The legal test of insanity is simply a test of knowledge. It formulates that popular but erroneous idea of mind which makes it the equivalent of the intelligence, and which either ignores the emotions and the will, or, accepting the poetical physiology of Scripture, regards them as functions of the heart, the bowels, and the "reins." If it were a fact that when the mind is disordered, the intellectual faculty is the only one that ordinarily suffers, the unscientific character of the test might be allowed to pass unchallenged. But it is not so. On the contrary, it is by no means unusual to find the disorder of the emotions and the will out of all proportion greater than the disorder of the intellect, and this is especially the case in regard to those victims of insanity who are most likely to bring themselves within reach of the criminal law. It is a common experience in lunatic asylums to find that the very persons who are most dangerous to themselves and those about them are

the most intelligent inmates in the institution. To apply, therefore, a mere intellectual test to such persons—to discharge, let us say, from an asylum, those who gave no evidence of intellectual deficiency or disorder, would be to let loose upon society a number of persons afflicted with the most dangerous of all forms of lunacy.

The practical result of disregarding the faculty of volition is that a person may be, and often is, pronounced to be legally responsible for an act which he had no power to control, and is punished for it accordingly.

That I may not be accused of presenting a purely medical view of the subject, I will quote some observations of Sir James Stephen on this point: "No doubt," he says, "there are cases in which madness interferes with the power of self-control, and so leaves the sufferer at the mercy of any temptation to which he may be exposed; and if this be shown to be the case, I think the sufferer ought to be excused....I do not think," he continues, "that it is expedient that a person unable to control his conduct should be subject to legal punishment. The fear of punishment can never prevent a man from contracting disease of the brain, or prevent that disease from weakening his power of controlling his own actions... To threaten such a man with punishment, is like threatening to punish a man for not lifting a weight which he cannot move."

Mr. Russell Gurney's bill to amend the law of homicide 1874.

In the year 1874, Sir James Stephen himself made an effort to improve the law relating to the plea of insanity, in a Bill which was introduced into the House of Commons by Mr. Russell Gurney, and was entitled "A Bill to amend the law of homicide." In that Bill it

was provided that homicide should not be deemed criminal if the accused person is, at the time of committing the act, prevented by any disease affecting his mind, (*a*) from knowing the nature of the act; (*b*) from knowing that it is forbidden by law; (*c*) from knowing that it is morally wrong; (*d*) from controlling his own conduct.

The first three of these tests, it will be observed, are the same as those proposed by the judges in 1843, with this difference: that they are cleared from a certain amount of ambiguity. The judges had said that a person should not be responsible for his act if, at the time of committing it, he did not know that he was doing wrong. This expression was capable of two different interpretations. It might mean the knowledge that it was morally wrong, or the knowledge that it was contrary to the law, and sometimes one of these interpretations had been given to it, sometimes the other. Sir J. Stephen proposed to include them both, so that ignorance of the immorality of the act, or ignorance of its illegality, would equally excuse a person from responsibility.

A new te introduced absence the power self-contr

The fourth test was quite new. For the first time it recognized the fact that insanity of such a nature as to render a person irresponsible might exhibit itself in a want of control over the will. And here we are brought face to face with the fiercely-disputed question, whether there is or is not, such a thing as irresistible impulse: that is, whether persons apparently sane, and, at any rate, free from obvious delusion, may be impelled to insane acts by a force that they cannot control. Many eminent lawyers entirely disbelieve in such a phenomenon,

Irresistib impulse

and maintain that those who think otherwise have failed to discriminate between an impulse that is irresistible and one that is simply not resisted. I cannot deny that medical witnesses have not unfrequently pressed this doctrine of irresistible impulse unduly, overlooking the fact that an insane impulse is not necessarily an irresistible one. But, as Sir Jas. Stephen remarks, "it is not because a man makes a foolish statement on that subject that the law is to put itself in a false position." That there are cases where the insanity reveals itself, chiefly if not solely, in acts of violence, the consequence of uncontrollable impulse, there is, unfortunately, no room for doubting.

Case of C. Lamb's sister.

An example of a striking kind is afforded in the case of poor Mary Lamb, the sister of the ever-delightful Elia. The sad story has just been re-told by Mrs. Gilchrist, how "Mary, worn out with years of nightly as well as daily attendance upon her mother, who was now wholly deprived of the use of her limbs, and harassed by a close application to needlework, to help her in which she had been obliged to take a young apprentice, was at last strained beyond the utmost pitch of physical endurance, 'worn down to a state of extreme nervous misery.'" One afternoon, having been moody and ill for a few days previously, she snatched a knife from the table, in a sudden attack of frenzy, "and pursued the young apprentice round the room, when her mother, interposing, received a fatal stab and died instantly." By some means or other, legal proceedings were avoided, and after a residence of many months in a private asylum at Islington, Charles Lamb entered into a "solemn engagement that he would take

his sister under his care for life," and thus he obtained her release. But she suffered a relapse before the end of the year, and was subject to similar outbreaks for the rest of her life, the mental depression which preceded the attacks being always accepted as an indication that she must be at once placed under the restraint of an asylum. Only by that means were further catastrophes avoided.

Select Committee on Mr. Gurney's bill.

To return to Mr. Gurney's bill. It was referred to a Select Committee of the House of Commons, and amongst the witnesses examined were Lord Bramwell and Lord Blackburn. The late Lord Chief Justice Cockburn submitted a statement in writing. Lord Bramwell, in the course of his examination, declared that "the law lays down such a definition of madness that nobody is hardly ever mad enough to be within it. Yet," he went on to say, "it is a logical and good definition," and he added that he had no wish to see it altered.

Lord Bramwell evidence.

Lord Blackburn's evidence is equally remarkable. "We cannot fail," he said, "to see that there are cases where the person is clearly not responsible, and yet knew right from wrong," and he gives an instance; yet he, too, expressed himself as satisfied with the existing law.

Lord Chief Justice Cockburn, on the other hand, strongly supported the proposed change. In his letter to the Committee he says, "As the law now stands, it is only when mental disease produces incapacity to distinguish between right and wrong, that immunity from the penal consequences of crime is admitted. The present Bill introduces a new element—the absence of the power of self-control. I concur, most cordially, in the proposed alteration of the law, having been always strongly of opinion that, as the

Lord Chief Justice Cockburn's opinion.

pathology of insanity abundantly establishes there are forms of mental disease in which, though the patient is quite aware he is about to do wrong, the will becomes overpowered by the force of irresistible impulse; the power of self-control when destroyed or suspended by mental disease becomes, I think, an essential element of responsibility."

Mr. Gurney's bill, however, as a whole, failed to commend itself to the Committee, and has never become law.

If there must be a legal definition of the precise degree of insanity which is to exempt a person from criminal responsibility, the tests that Sir James Stephen here proposed are infinitely less objectionable than those to which our judges still adhere. But I think it can be shown that insanity is too subtle a disease to be estimated either qualitatively or quantitatively by any rigidly-defined tests, however clear and comprehensive. The popular notions that one man can recognize lunacy as well as another, that its recognition is merely a matter of common sense, requiring no special training or experience, and that it invariably betrays itself by definite and unmistakeable symptoms, are altogether erroneous. It is only necessary to pay a visit to a lunatic asylum, and to enter into conversation with its inmates, in order to have these views dispelled. It will be found that in a lunatic asylum the raving maniac is an exception, the majority of the inmates being quiet, orderly persons, who present, so far as their outward appearance goes, little or nothing to distinguish them from other people. Probably no one visits such an institution for the first time without being puzzled to know which are the officials and which the inmates.

Insanity not definable by rigid tests.

Its early symptoms often slight and obscure

Like other chronic disorders, insanity is apt to come on insidiously. Its early symptoms are very often extremely slight and extremely obscure; so much so that they are almost invariably either misinterpreted or overlooked by the sufferer's friends. A certain alteration of manner, a disposition to talk a little more or a little less than usual, an unwonted recklessness in expenditure, a tendency to be suspicious of those who have hitherto been implicitly trusted, a slight failure in business capacity—these may be all the symptoms that mark the departure from mental health, until one day the smouldering insanity betrays itself in an act of violence. Suppose that act of violence to be one that brings its perpetrator within reach of the law, the medical witness who supported the plea of insanity by recounting the premonitory symptoms just mentioned would be smiled at as an amiable but foolish and misguided visionary. Yet let us look for a moment at some other functional diseases of the nervous system,* and see whether, reasoning from analogy, such a course of events is not exactly what we might expect. The more common brain diseases, apoplexy and softening, are not primarily diseases of the nerve tissue, but of the blood-vessels supplying that tissue. In apoplexy the diseased blood-vessel gives way, and the brain is injured as a consequence; in softening, the brain undergoes deterioration from a failure on the part of the diseased blood-vessels to supply it with the material necessary for its maintenance. Insanity, on the other hand, is a functional disorder of the nervous

* By the words "functional diseases," I mean diseases which are not necessarily accompanied with such structural changes as are capable of being recognized after death.

tissue itself, and therefore we must look for the analogies we seek not amongst the more common and grosser lesions of the brain, but amongst other functional disorders of the nerve structures themselves, such, for example as epilepsy and chorea, or St. Vitus's dance.

Analogy between epilepsy and insanity

The analogy between epilepsy and those forms of insanity which are accompanied with sudden outbursts, is a very close one. An epileptic fit is due, speaking broadly, to a disorder of those portions of the highly-organised nervous tissue lying on the surface of the brain, whose function it is to take the supreme direction of the movements of the voluntary muscles of the body. The outburst of maniacal fury is due to a corresponding disorder of those portions of the same tissue which have for their function the control of the thoughts, the emotions, and the will. The most striking feature in each of these phenomena is its suddenness. The insane impulse and the epileptic fit have both something of the nature of an explosion. The causes that have been at work in each case have been cumulative in their action, and only when the accumulated irritation has reached a certain degree of intensity, has there been any, or, if any, but the very slightest outward indication of the gathering storm. The epileptic may have had one or two transient attacks of giddiness, or an occasional look of vacancy, and the madman may have exhibited one or more of those comparatively trifling alterations of character and manner which I have enumerated; but in neither of the cases I am supposing, will there have been any premonitory symptoms sufficiently striking to attract the attention of persons who have had no special training or experience

in such matters. The epileptic fit is a storm of muscular movement, a general convulsion of the voluntary muscles; the madman's violence is a storm of thought, emotion, and will, betraying itself in extravagant conduct; it, too, is essentially a convulsion. The analogy may be pursued further. After the epileptic fit and the phenomena that sometimes immediately follow it have subsided, the individual to all appearance returns to his normal condition, giving no indication, beyond perhaps a bruise or two, of what he has gone through. Similarly, after the insane act of violence, there may be an apparent return of mental soundness, such as to make it difficult, if not impossible, to discover any evidence of insanity.

After what has been said, it will occasion no surprise to hear that these two kinds of storms occasionally alternate in the same individual, an outburst of insane fury or violence taking the place of an epileptic fit, and *vice versâ*. Nor will it be wondered at that the one kind of explosion may occur in the parent and the other in the offspring.

But the object I have had in view in tracing the analogy is to point out that while there are many cases of insanity where the malady is patent to the whole world, there are others, and those precisely the cases most likely to come up for trial on criminal charges, where the disease is exceedingly difficult to recognize, even by the trained observer, and by the untrained, impossible. The spectacle of an epileptic seizure taking place suddenly in an apparently healthy person is one of such every-day occurrence that it excites scarcely any notice; but if a medical witness stands up in court and suggests that an atrocious and apparently motiveless act of violence was

the insane act of the apparently calm prisoner in the dock, he is in danger of being ridiculed as a theorist. That such, however, is the explanation of a certain number of acts of violence cannot be doubted, and the analogy here traced to the well-known phenomena of epilepsy may serve to bring this fact home to us, and to remind us that there is nothing in it which is out of harmony with other facts that are daily before our eyes.

Analogy between chorea an insanity.

Let us now look for a moment at the analogies which insanity presents with the disorder popularly known as St. Vitus's dance. Those of you who have had the opportunity of seeing cases of this kind need no description of it; but for the sake of those who have not, I may say that the prominent symptom of chorea is a series of irregular and involuntary contractions of those muscles of the body that are normally under the control of the will, giving rise to spasmodic jerkings of the limbs and grotesque contortions of the features. The disorder has been called an insanity of the muscles, and indeed it is a condition which has the closest analogy to insanity. In the one case the muscles are excited to irregular and purposeless action, in the other the ideas and emotions are affected in a very similar manner. But, for my present purpose, the most important part of the analogy is observed in connection with the earliest manifestations of these disorders. St. Vitus's Dance is chiefly a disorder of children; the slight twitchings that mark its onset are almost always mistaken for naughty tricks, and the child, instead of being treated as the subject of disease, is visited with reproof and punishment. The child's features are slightly contorted; it is thought to be making

faces. The muscles of its hands and arms being no longer in complete subjection to the will, it lets things fall; it is thereupon scolded for carelessness. This goes on for a time until the development of the disorder at length forces home the conviction that the grimaces and twitchings are due not to naughtiness, but to disease. If this mistake is so constantly made where the symptons are as evident to the senses as any symptoms can possibly be, how can it be wondered at that the earliest signs of mental aberration should be difficult of recognition and almost invariably misunderstood, should in fact be attributed to the innate depravity of human nature, and be punished accordingly?

The existing tests unsatisfactory in their practical application.

I pass on to show how inadequate the tests are when they come to be applied to actual cases. Take, for example, the case of Hadfield, the man who shot at George III. It is evident that he knew that the act he was about to commit was murder, and that he would thereby render himself liable to the penalty of death, for his express object was to do something which would result in the sacrifice of his own life, a sacrifice which he believed to be necessary for the salvation of the world. Had the judges' formulæ been laid before the jury in that case; had they been told that they must find the prisoner guilty provided they were satisfied that he knew the nature and quality of the act he was committing, and knew that in committing it he was doing wrong; and had they done as they were told, Hadfield must have been hanged as a sane criminal.

Another instance will be found in the evidence of Lord Blackburn before the Select Committee of the House of

Commons in 1874. The case was that of a poor woman who was tried for killing a girl of fifteen. The prisoner's insanity was proved beyond a doubt; yet she knew the nature and quality of her act, and knew that what she had done was wrong. The prescribed tests were here so manifestly inapplicable that the judge declined to place them before the jury, knowing that if he did they would, to use his own expression, take the bit in their own teeth. He told them there were exceptional cases, and they thereupon brought in a verdict of insanity.

But instances of this kind, where the judge, as it were, takes the law into his own hands or boldly over-rides it, are very rare. Under ordinary circumstances the result of the trial is by no means so satisfactory as in the case mentioned by Lord Blackburn. Let me mention, by way of illustrating the more usual course of events, two trials that occurred within a very short time of each other in the year 1883. The first was that of a man named Wm. Gouldstone, who, after exhibiting symptoms of intense mental depression for several days, deliberately killed his five children. The second was that of James Cole, who, while labouring under a delusion that his wife had hidden people under the floor and in the cupboard to try to poison him, took up his unoffending child of three and a half years from its cradle and killed it by knocking its head violently against the wall. In the one case several of the members of the family were proved to be insane, and in the other there was evidence of a strong family predisposition to epilepsy, which is first cousin to insanity. The men themselves were both undoubtedly insane. The jury, however, were told in both instances that the only

question for them was whether the prisoner knew the nature and quality of the act he was committing, and knew that it was wrong. As, on their own showing, both of them intended to kill their children, and knew that they had thereby incurred the penalty of death, the jury, following the judge's direction, had no alternative but to reject the plea of insanity, and each of the men was accordingly sentenced to be hanged without any hope of mercy being held out to him. Fortunately, owing to the strong representations of some medical men and of the medical press, the Home Secretary was induced to authorize an examination by two competent physicians, the result of their report being, of course, that instead of being sent to the scaffold, the men were committed to the safe keeping of a lunatic asylum.

Surely, even if there were no other consideration involved, the fact that sentence of death is so repeatedly reversed in these cases by the Home Secretary, after a secret and informal enquiry, is alone sufficient to condemn the present state of things. Had there been time, I might have put this part of my case more strongly. I might, for instance, have referred to cases where the tests have been applied, and the plea of insanity rejected, and where no appeal having been made to the Home Secretary, the poor lunatic has been hanged without further enquiry. One such case, in which I happened myself to be engaged as a witness, I am not likely ever to forget. No one, I imagine, could have heard the clear evidence that was produced at the trial on that occasion as to the man's insanity, and then have read how, when the moment for his execution arrived, the poor fellow mounted the

scaffold with the surprised look of a man awaking from a dream, utterly failing to comprehend the meaning of it all, without being shocked at the scandalous inhumanity of the proceeding, and without feeling that he would be guilty of moral cowardice, if, when occasion offered, he did not raise his voice against the system that sanctioned it.

Suggested changes.

But I must hasten to indicate, as briefly as possible, the changes which, it seems to me, would help to remedy the evils to which I have called attention.

We have seen how the legal tests of insanity underwent alteration from time to time, in accordance with the growing tendency to a more humane regard for the unfortunate victims of that disease. We have also seen that no change has been made in them since 1843, now upwards of forty years ago, although the rules that were then formulated, are now so far behind the time as to be discreditable. A further change has become imperative. What direction ought that change to take?

Knowledge-tests should be abolished.

In the first place, the existing tests, which are mere knowledge-tests, should be entirely abolished, the question of responsibility depending not upon a person's knowledge, but upon his capacity for acting upon that knowledge: that is, upon his power of self-control.

Provision for the case of idiots and imbeciles.

Secondly, in any future legislation on this subject, provision should be made for the case of idiots and imbeciles, to whom no reference is made in the existing rules, but who certainly ought not to be prevented from pleading insanity because their insanity happens to be due to defect, and not to disease.

Might not the form of verdict be altered?

In the next place, it is well worth considering whether the present form of verdict might not be altered with

advantage. Where the only defence is that of insanity, the crime itself being admitted or proved, a jury has at present but two courses before it, viz. (1) to reject the plea and pronounce the prisoner guilty, when he will be punished as a sane criminal; or (2) to accept the plea and pronounce him not guilty on the ground of insanity, when he will be consigned to a criminal lunatic asylum during Her Majesty's pleasure, which generally means for life. Not to mention the absurdity of returning a verdict of not guilty when the guilt is proved, this method, by recognizing no difference between one insane criminal and another, or between an insane person who has committed a serious crime, and one whose offence is comparatively trifling, has the effect of preventing the plea of insanity from being urged as often as it ought to be. There is only one punishment, that of death, which is more dreaded by rational beings than a life-long incarceration in a criminal lunatic asylum; hence in the case of all crimes, except that of murder, a prisoner's counsel almost invariably prefers that his client should run the risk of the ordinary legal punishment for his offence, rather than that by pleading insanity, he should expose himself to a worse fate. It seems to me that in every case where the question of a prisoner's insanity arises, the Court should institute two separate enquiries, and the jury return two separate verdicts.

The first enquiry should be whether the prisoner committed the crime with which he is charged. In case of the verdict on this enquiry being guilty, a second enquiry should take place as to the prisoner's mental condition at the time the act was committed. Supposing the insanity

to be established, a discretionary power should rest with the judge, either to inflict a modified punishment, or to consign at once to an asylum. It cannot be doubted that there are varying degrees of responsibility in insane criminals, as there are certainly varying degrees in the character of the crimes perpetrated by them, and the only way to ensure justice being done, is to take into account the whole of the circumstances in each case, and deal with it accordingly.

As the jury in arriving at a conclusion with reference to a prisoner's insanity must necessarily be guided almost entirely by the medical evidence, it is important that that evidence should invariably be the best that is obtainable.

Appointment of medical experts by the State.

My last suggestion, therefore, is that in every case where the defence is to be that of insanity, two independent physicians, appointed by the State, should be required to institute an enquiry *before* the trial, into the state of mind of the accused. At present, unless the prisoner or his friends are able to engage the services of a solicitor, and to pay for the evidence of experts, the defence, generally undertaken at the request of the judge by some junior member of the bar at the moment of trial, is conducted under every conceivable disadvantage, and the plea is either entirely unsupported by medical evidence, or is supported merely by the testimony of the medical men who happen to have been brought into contact with the accused, and who may have had no special experience in insanity, or in the art of giving evidence.

Such an enquiry as is here suggested is now frequently instituted, at the instance of the Home Secretary, *after* trial and sentence; why should not the same machinery

be set in motion *before* the trial? Not only would such a proceeding be more regular, but it would have this great advantage, that the experts would give their evidence upon oath in open court, and that an opportunity would be afforded for cross-examination.

The principle which it is here suggested to adopt in cases of alleged insanity, has already been acted upon in cases of alleged poisoning. Two distinguished toxicologists have recently been appointed analysts to the Home Office, their duty being to conduct the necessary analyses in cases of suspected poisoning, and to give evidence as to the result of their enquiry at the trial of the accused. It would not be difficult to find two physicians of acknowledged eminence as authorities on insanity, competent to act in the capacity of experts, who would possess the confidence both of the medical profession and of the public. The two gentlemen now generally selected by the Home Secretary for this function fully answer to these requirements.

Conclusio

I claim no originality for these suggestions; most of them have been made before in one form or another. My aim to-day has not been to say anything new, but rather to place before you, as concisely as I could, a general survey of this important subject, and especially those medical aspects of it, which, in the course of my own reading and experience, have appeared to me most to demand consideration.

In bringing my remarks to a conclusion, I make no apology for quoting and appropriating the words with which the late Dr. Guy, one of our foremost medical jurists, closes his latest utterance on this question.

"If," he says (in the last chapter of his 'Factors of the unsound mind'), "I seem to have handled a great subject unworthily, I plead in mitigation of my offence, its immense extent and admitted difficulty. If I have run counter to any man's preconceived opinions, let me assure him that it is not with arrogance or pleasure that I differ from him. To him I desire to attribute that which I claim for myself—a paramount love of truth, and a public spirit which will not suffer me to forget that, while I am a member of a noble profession, I am also a citizen of a great State—a State which, if in some respects she claims to *teach the nations how to live*, in others shows herself not too proud to learn; a State that has no higher title to respect than that which she derives from her humanity; a State that would suffer indelible disgrace if, ceasing to regard the madman as an object of profound compassion, she should come to treat him as a thing only calculated to excite feelings of intolerance and disgust."